



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON
DIRECTOR

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[REDACTED] MI [REDACTED]

Date Mailed: June 20, 2018
MAHS Docket No.: 18-004603
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

Following Petitioner's request for a hearing, this matter is before the undersigned administrative law judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 42 CFR 438.400 to 438.424; 45 CFR 99.1 to 99.33; and 45 CFR 205.10; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on June 13, 2018, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Tracy Upshaw, recoupment specialist.

ISSUE

The issue is whether MDHHS established an overissuance of Food Assistance Program (FAP) benefits against Petitioner.

FINDINGS OF FACT

The administrative law judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On January 13, 2016, Petitioner applied for FAP benefits. Petitioner's household included his spouse (hereinafter "Spouse") and three minor children. Boilerplate language from the application stated that clients are to report to MDHHS any changes in income within 10 days. (Exhibit A, pp. 43-68)
2. On April 29, 2016, Spouse submitted a Change Report to MDHHS. Spouse reported that Petitioner left the home on April 21, 2016. Exhibit A, pp. 69-70. Petitioner testified that he returned home approximately one week after leaving.
3. On an unspecified date in April 2016, Spouse began receiving employment income from an employer (hereinafter "Employer").

4. Spouse's 2016 adjusted gross income from Employer was \$ [REDACTED] (Exhibit A, pp. 29-42)
5. From June 2016 through December 2016, Petitioner received \$ [REDACTED]/month in FAP benefits (Exhibit A, pp. 10-11). Petitioner's FAP issuances did not factor Spouse's employment income. Petitioner's FAP issuance included himself as a group member.
6. On March 13, 2018, an MDHHS specialist referred a potential overissuance to a recoupment specialist concerning Spouse's unreported employment income and improper group members. (Exhibit A, p. 73)
7. On an unspecified date, MDHHS calculated that Petitioner received \$ [REDACTED] in over-issued FAP benefits over the period from June 2016 through December 2016. The OI budget from June 2016 factored a group size of 5 persons; subsequent budgets factored a group size of 4 persons, as Petitioner was removed as a member. All OI budgets factored Spouse's average monthly income from Employer. (Exhibit A, pp. 12-28).
8. On April 25, 2018, MDHHS mailed Petitioner a Notice of Overissuance informing Petitioner of a \$ [REDACTED] OI of FAP benefits over the period from June 2016 through December 2016. The stated reason for the OI was agency error. (Exhibit A, pp. 4-5)
9. On May 3, 2018, Petitioner requested a hearing to dispute the OI of FAP benefits. (Exhibit A, pp. 2-3)

CONCLUSIONS OF LAW

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 273. The Department (formerly known as the Department of Human Services) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner requested a hearing to dispute an alleged OI. MDHHS presented a Notice of Overissuance (Exhibit A, pp. 4-5) dated April 25, 2018. The notice informed Petitioner of an OI of FAP benefits totaling \$ [REDACTED] occurring over June 2016 through December 2016. The stated reason for OI was Petitioner's failure to timely report employment income and MDHHS' failure to timely process a reported change in group members.

When a client group receives more benefits than it is entitled to receive, MDHHS must attempt to recoup the overissuance. An overissuance is the amount of benefits issued to the client group in excess of what it was eligible to receive. *Id.* Recoupment is an

MDHHS action to identify and recover a benefit overissuance. BAM 700 (January 2018), pp. 1-2.

There are three different types of overissuances. An agency error is caused by an incorrect MDHHS action (including a delay or inaction). A client error occurs when the client received more benefits than they were entitled to because of giving incorrect or incomplete information to MDHHS. An intentional program violation occurs when a client intentionally misreported or failed to report information. Client and Agency errors are not pursued if the estimated amount is less than \$250 per program. *Id.*, pp. 4-8.

MDHHS alleged that Respondent received an OI of FAP benefits, in part, due to unbudgeted employment income. MDHHS alleged the error was due to client error.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. Changes in income must be reported within 10 days of receiving the first payment reflecting the change. BAM 105 (July 2015), pp. 10-11.

MDHHS presented Spouse's 2016 tax returns which verified that Spouse received \$[REDACTED] in gross employment income. MDHHS testimony indicated that they were unable to obtain Spouse's actual pay dates and amounts. MDHHS testimony alleged that Spouse's employment with Employer began in April 2016. MDHHS divided Spouse's adjusted gross income over eight months to convert Spouse's partial year's employment income to a monthly average of \$[REDACTED] this income was used in OI budgets. MDHHS factored the income as unreported. Petitioner did not present any counter argument to MDHHS' method of conversion. Given the evidence, MDHHS properly factored Spouse's income from Employer as unreported in determining an OI of FAP benefits; MDHHS also properly determined a monthly average of employment income for Spouse.

MDHHS also alleged that Petitioner received an OI of FAP benefits due to improper group size. Specifically, MDHHS alleged that from July 2016 through December 2016, Petitioner was not a group member.

Bridges will help determine who must be included in the FAP group prior to evaluating the non-financial and financial eligibility of everyone in the group. FAP group composition is established by who lives together, the relationships of those who live together, whether persons who live together buy and prepare food together, and whether the persons are in an eligible living situation. BEM 212 (January 2017), p. 1.

Presented OI budgets factored a group size of 5 persons (Petitioner, Spouse and their three minor children) for June 2016. MDHHS factored a group size of 4 persons beginning July 2016 after removing Petitioner as a group member. MDHHS justified the change in group members based on Spouse's reporting in April 2016 that Petitioner left the home. MDHHS testimony further indicated that Petitioner's case file showed no reporting that Petitioner returned home during the OI period.

Petitioner testified that he and Spouse separated for about one week in April 2016. Petitioner further testified that he returned to home after the one week and did not leave again during the OI period. Petitioner's testimony was credible and based on firsthand information. This consideration supports that Petitioner's group size was proper during the alleged OI period.

Petitioner's and/or Spouse's alleged failure to report Petitioner's return to the group is not persuasive evidence that Petitioner remained out of the home during the OI period. MDHHS acknowledged that Petitioner was not removed from the FAP group during the alleged OI period. Because MDHHS never removed Petitioner from the group, there was no change to report when Petitioner returned to the household. A client would only be expected to report information that affects ongoing eligibility.

Based on the evidence, it is found that Petitioner only left Spouse and their three children for approximately one week in April 2016. Petitioner's absence was not long enough to affect Petitioner's FAP group size. Thus, concerning the OI based on improper FAP group size, MDHHS did not establish an OI.

Presented budgets were correct concerning Spouse's unbudgeted employment income, but incorrect concerning Petitioner's exclusion as a group member. To determine the proper OI, MDHHS will have to recalculate Petitioner's FAP eligibility during the OI period while again factoring Petitioner's unreported employment income but including Petitioner as a group member.


DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly calculated an OI of FAP benefits based on improper group size. It is ordered that MDHHS begin to perform the following actions within 10 days of the date of mailing of this decision:

- (1) Recalculate the alleged OI against Petitioner from June 2016 through December 2016 subject to the finding that Petitioner was a FAP group member; and
- (2) Issue notice of the newly calculated OI, if any, in accordance with MDHHS policy.

The actions taken by MDHHS are **REVERSED**.

CG/



Christian Gardocki
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS Department Rep.

MDHHS-Recoupment

DHHS

Vivian Worden
MDHHS-Wayne-Macomb-36-Hearings

Petitioner

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M Shumaker
C Gardocki
MAHS